

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*
Plaintiffs,

CIVIL ACTION NO: 14-00029-AB

v.

National Football League and
NFL Properties, LLC,
successor-in-interest to
NFL Properties, Inc.,
Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

BAP ADMINISTRATOR STATUS REPORT – 3rd QUARTER 2019

1. Garretson Resolution Group serves as the Baseline Assessment Program (“BAP”) Administrator (“the Administrator”) for the Settlement program in the above-captioned action.¹ Since its appointment by the Court to serve in this role, the Administrator has worked diligently with Class Counsel and Counsel for the NFL Parties (“the Parties”) to meet its responsibilities under the Settlement Agreement. The Administrator submits this Status Report to provide an update to the Court on the status of the Administrator’s work implementing the BAP.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Settlement Agreement.

Maintaining the Qualified BAP Provider Network

2. In implementing the BAP, the Administrator is responsible for establishing and maintaining a network of Qualified BAP Providers to administer the specified baseline assessment examinations under the BAP and authorized medical services under the BAP Supplemental Benefits program.

3. As of August 21, 2019, the Administrator has contracted with 326 Qualified BAP Providers in fifty-two cities across the United States. The Administrator is continuing its efforts to enroll Qualified BAP Providers to expand the BAP network wherever necessary to ensure sufficient depth of coverage and improve the efficiency of this program. For cities without a sufficient number of contracted Qualified BAP Providers to fully meet demand, the Administrator continues to seek alternate arrangements to ensure timely appointments for Retired NFL Football Players. In the previous quarter, the Administrator has accommodated demand for clinical neuropsychology appointments in cities with tight capacity by bringing Qualified BAP Providers from other cities with excess provider capacity to administer baseline assessment examinations. Specifically, the Administrator has utilized this approach in several cities with high concentrations of Retired NFL Football Players, including Dallas, Atlanta, Nashville, Seattle, Cincinnati, New Orleans, Birmingham, and Jackson, MS.

Baseline Assessment Examinations Scheduled and Attended to Date

4. The BAP offers a two-part baseline assessment examination, consisting of a clinical neuropsychology appointment lasting an average of six to eight hours and a basic neurological examination lasting approximately one hour. The Administrator's scheduling process is intended to ensure that Retired NFL Football Players are scheduled at a provider location, date, and time acceptable and convenient to them. Typically, the Administrator attempts to schedule the clinical neuropsychology appointment so that it occurs first, and far enough in advance of the neurology

appointment, that the clinical neuropsychologist's report is available for review during the neurology appointment.

5. As of August 21, 2019, the Claims Administrator of the Settlement program has determined that 12,833 Retired NFL Football Players are eligible for participation in the BAP, an increase of three since the previous Administrator's report². Of these 12,833 individuals, the Administrator has received requests to schedule baseline assessment examinations from 7,378 Retired NFL Football Players directly or through their attorneys. This represents 57.5% of BAP-eligible Retired NFL Football Players.

6. Of the 7,378 Retired NFL Football Players who have requested appointments, the Administrator has offered one or more appointments with Qualified BAP Providers to 7,006 of them (95.0%). Retired NFL Football Players who have requested appointments have waited a median time of 16 days until the Administrator secured and offered a neuropsychology appointment (consisting of a specific date, time, and location) from a Qualified BAP Provider neuropsychologist. To ensure the neuropsychology appointment takes place before the neurology appointment, the Administrator seeks to confirm with the Retired NFL Football Player or his attorney that the Retired NFL Football Player accepts the offered neuropsychology appointment before securing a neurology appointment. As a result of these activities, the median time between the initial offer of a neuropsychology appointment and the initial offer of a neurology appointment is 60 days. Median time from the initial request until the actual neuropsychology appointment is 98 days; the median time from request until the actual neurology appointment is 170 days. Table 1 summarizes wait times as of August 21, 2019.

² Of the three Settlement Class Members who were determined eligible for the BAP during the quarter, one offered proof that he had played half of an Eligible Season to challenge his original unfavorable Registration Determination, the second revoked his opt out, and the third resolved conflicting representation issues that had prevented his registration from being processed at the time of his timely registration submission.

Table 1. Appointment Scheduling Wait Times

Metric	Median in Days
Time from request to offered neuropsychology appointment	16
Time from request to offered neurology appointment	76
Time from request to neuropsychology appointment date	98
Time from request to neurology appointment date	170

7. As of August 21, 2019, 5,633 Retired NFL Football Players (81.5% of those who have requested appointments) have attended a total of 10,488 appointments. This number consists of 4,657 Retired NFL Football Players (63.1%) who have attended two or more³ appointments and 976 Retired NFL Football Players (13.2%) who have attended one appointment.

8. Of the 7,006 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 6,292 (85.3% of those who have requested appointments) currently have one or more appointments scheduled (including appointments that have already taken place). Of the 6,292 Retired NFL Football Players with scheduled appointments, 5,158 (69.9% of all who have requested) have been scheduled for both neuropsychology and neurology appointments, and 1,134 (15.4% of all who have requested) have been scheduled for one appointment. For the latter group, the Administrator is working to promptly schedule these Retired NFL Football Players' second appointments.

9. Of the 7,006 Retired NFL Football Players for whom the Administrator has scheduled or offered one or more appointments, 714 have had at least one appointment scheduled or offered to them in the past but did not accept or attend. These 714 Retired NFL Football Players have had a total of 2,427 rejected, cancelled, or missed appointments (an average of 3.4 each). Table 2 breaks down the reasons and sources of those cancellations.

³ Certain Retired NFL Football Players have attended more than two appointments because they and/or the Qualified BAP Providers have requested to break up the clinical neuropsychology appointments, which the Administrator has accommodated.

Table 2. Cancellation Reasons – Players with No Active Appointments

Cancellation Reason	Source		
	Player	Provider	Administrator
Confirmed, then Cancelled	15.8%	5.8%	1.5%
Rejected or Withdrawn	54.6%	10.9%	4.2%
Missed	7.2%	0.0%	0.0%

More than half of these Retired NFL Football Players reside in or near thirteen cities – Atlanta, Miami, Dallas, Los Angeles, New Orleans, Phoenix, Tampa, Birmingham, Houston, Chicago, Jacksonville, San Francisco, and Charlotte – all of which are among the cities with the highest populations of Retired NFL Football Players. The median time from request to clinical neuropsychology appointment offered among Retired NFL Football Players with no active appointments in these cities ranges from four days in Houston to 22 days in Dallas, with an average of 10 days. This average represents a substantial improvement when compared with similarly situated Retired NFL Football Players described in the Administrator’s previous report, when the average was 24 days. It reflects the Administrator’s efforts to expand Qualified BAP Provider availability through recruiting and through bringing Qualified BAP Providers from cities with excess capacity to cities with limited capacity. In all such cases, the Administrator continues to work with Qualified BAP Providers, and Retired NFL Football Players or their attorneys, to ensure Retired NFL Football Players receive appointments that meet their preference for location, provider, and schedule, while accommodating the Qualified BAP Providers’ schedules.

10. Finally, 372 (5.0%) Retired NFL Football Players have requested baseline assessment examinations but have not yet had appointments scheduled or offered to them. Of these 372 Retired NFL Football Players, 343 (92.2%) requested participation in the BAP in the past ninety days, a period marked by unusually high demand for baseline assessment examination

appointments (see the next section of this report for additional detail). The Administrator continues to work to secure appointments for these Retired NFL Football Players and will continue to update its progress accordingly. Table 3 summarizes Retired NFL Football Players with requests and appointments scheduled through August 21, 2019.

Table 3. Summary of Requests and Scheduling Activity to Date

Status	Number	% of Requested
Players requesting participation in BAP	7,378	100.0%
Players offered one or more appointments	7,006	95.0%
Players with two appointments currently scheduled	5,158	69.9%
Players with one appointment currently scheduled	1,134	15.4%
Players with appointments previously offered but none attended or currently scheduled	714	9.7%
Players waiting for their first offered appointments	372	5.0%

Note: Indented rows are subsets of rows above.

Deadline for Participation in the BAP

11. Section 5.3 of the Settlement Agreement establishes the deadline for each Retired NFL Football Player to receive a BAP baseline assessment examination. For Retired NFL Football Players age 43 or older on the Effective Date, the deadline to take a baseline assessment examination is the second anniversary of the commencement of the BAP,⁴ which was June 6, 2019. For Retired NFL Football Players younger than age 43 on the Effective Date, the deadline is the earlier of the day they turn 45 years of age or June 6, 2027 (the tenth anniversary of the commencement of the BAP).

⁴ As established by the Settlement Agreement, the commencement of the BAP was 120 days after the Effective Date, or June 6, 2017.

12. As June 6, 2019 approached, the Parties, in consultation with the Administrator, made two important accommodations to the rules governing the deadline to maximize the opportunity for Retired NFL Football Players to participate in the BAP. First, in recognition that some Retired NFL Football Players who were less than age 43 on the Effective Date turned 43 prior to the commencement of the BAP, the Parties agreed that no one would be held to a deadline occurring prior to June 6, 2019, ensuring that all Retired NFL Football Players would have at least two years to participate in the program. Second, the Parties agreed to consider a Retired NFL Football Player with a June 6, 2019, deadline as having “taken” his BAP baseline assessment examination by his deadline so long as he contacted the Administrator to request participation by June 6, 2019. This ensured that the large number of Retired NFL Football Players subject to the June 6, 2019 deadline (more than two-thirds of the 12,833 Retired NFL Football Players eligible for the BAP) would not be denied participation in the BAP due to the high demand for appointments as the deadline approached.

13. Moreover, the Administrator worked with both the Claims Administrator and Class Counsel to ensure awareness of the BAP deadline rules among Retired NFL Football Players and their attorneys. Starting in October, 2018, the Administrator provided notification about the deadline rules through the monthly newsletter distributed by the Claims Administrator. The Administrator also provided analysis to support communication by Class Counsel of the upcoming deadline. On May 24, 2019, Class Counsel sent email or hard copy communications to all *pro se* Retired NFL Football Players who had not requested an appointment and were subject to the June 6, 2019, as well as email communications to all attorneys representing similarly situated Retired NFL Football Players.

14. In response to these efforts, requests for BAP participation in the BAP rose dramatically during the period approaching June 6, 2019. In the four week period ending on June

12, 2019, the Administrator received 1,205 requests for participation from Retired NFL Football Players⁵, requiring 2,410 BAP examination appointments (one neuropsychology appointment and one neurology appointment for each Retired NFL Football Player). As a result of this increase in demand for baseline assessment examination appointments, the total number of appointments needed to meet demand increased 71% over a 21-day period – from 1,474 appointments needed on May 24, 2019 (prior to Class Counsel sending the final reminder to Settlement Class Members), to 2,522 appointments needed on June 10, 2019. During this period, the Administrator redoubled its efforts to accommodate the increase in requests by focusing scheduling efforts on cities with the highest demand, continuing to recruit new Qualified BAP Provider candidates, requesting additional appointment capacity from incumbent Qualified BAP Providers, and sending Qualified BAP Providers from cities with excess capacity to cities with limited capacity. As of August 21, 2019, these efforts resulted in a 14% decrease in the number of appointments needed, from a peak of 2,522 appointments to the current level of 2,179 appointments. The Administrator expects the number of outstanding appointment requests to return to its historical average in the coming months as a result of its ongoing scheduling activities.

Providing Reports from Baseline Assessment Examinations

15. As part of its efforts to ensure prompt and accurate production of medical records and reports, the Administrator conducts training sessions and offers guidance materials to each Qualified BAP Provider. The Administrator is also in regular contact with Qualified BAP Providers as questions or issues arise that may slow the production of medical records and reports. Importantly, to provide incentives for Qualified BAP Providers to submit medical records and

⁵ In comparison, the Administrator had received 306 requests for participation in the preceding four week period.

reports in a timely manner, the Administrator included a provision in all of its Qualified BAP Provider contracts that makes provider payment contingent on the Qualified BAP Providers submitting such documents.

16. Since inception of the BAP, the Administrator has received BAP-generated medical records and reports from at least one specialist (neurologist or clinical neuropsychologist) for 5,293 Retired NFL Football Players, including records and reports from both specialists for 4,225 Retired NFL Football Players, and records from one specialist for 1,068 Retired NFL Football Players.

17. After the Administrator receives the medical records and reports, the Administrator reviews them for accuracy and completion, particularly against the requirements of the Settlement Agreement.

18. When either the records or reports are incomplete, the Administrator works with the Qualified BAP Provider to ensure completion. The most common reasons for such follow-ups with providers include:

- a. failure to clearly state what, if any, Neurocognitive Impairment level the Retired NFL Football Player qualified for, as defined by the Settlement Agreement;
- b. omission of references to corroborating evidence, as required for diagnosing Level 1.5 Neurocognitive Impairment or Level 2 Neurocognitive Impairment under the Settlement;
- c. failure to adequately address test validity and/or functional impairment, two topics required to be reported by clinical neuropsychologists as part of their reports; and

- d. failure to meet other administrative requirements as articulated in the Clinician's Interpretation Guide promulgated pursuant to Exhibit A-2 of the Settlement Agreement.

19. Of the 4,225 Retired NFL Football Players for whom both reports have been submitted by Qualified BAP Providers, the Administrator has completed its review process for 3,499 and has published them (or is in the process of publishing them) to the Retired NFL Football Player's online portal. Table 4 shows the status for Retired NFL Football Players whose reports have been submitted to the Administrator as of August 21, 2019.

Table 4. BAP Report Review Status

Status	Number	% of Players with Both Appts Attended
Players who have attended both appointments	4,657	100.0%
Players with both reports submitted to the Administrator	4,225	90.7%
Players with review completed and approved to publish to portal	3,499	75.1%
Players with reports undergoing initial review	89	1.9%
Players with reports in follow up status with Qualified BAP Providers	585	12.6%
Players with reports undergoing review by the Appeals Advisory Panel due to conflicting diagnoses between Qualified BAP Providers (per the Settlement Agreement)	52	1.1%

Note: Indented rows are subsets of rows above.

20. As of August 21, 2019, BAP examinations have resulted in 115 diagnoses of Level 1 Neurocognitive Impairment, 115 diagnoses of Level 1.5 Neurocognitive Impairment, 77 diagnoses of Level 2 Neurocognitive Impairment, with 3,192 Retired NFL Football Players receiving no diagnosis.

BAP Supplemental Benefits

21. Under the Settlement Agreement, a Retired NFL Football Player diagnosed with Level 1 Neurocognitive Impairment is eligible to receive BAP Supplemental Benefits related to the Retired NFL Football Player's impairment in the form of medical treatment, counseling, and/or examination by Qualified BAP Providers, including pharmaceuticals if medically appropriate and prescribed by a Qualified BAP Provider.

22. The Settlement Agreement required Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, to establish the maximum per-player benefit under the BAP Supplemental Benefits on the first anniversary of the commencement of the BAP. Accordingly, on June 6, 2018 (the first anniversary of the commencement of the BAP), Co-Lead Class Counsel and Counsel for the NFL Parties, in consultation with the BAP Administrator, established the maximum per-player benefit under the BAP Supplemental Benefits at \$35,000. Given the number of Retired NFL Football Players currently eligible for the BAP, this amount was determined to be the maximum benefit that will ensure sufficient funds to pay for all possible baseline assessment examinations, which in turn ensures the overall sufficiency of the BAP Fund. Co-Lead Class Counsel and Counsel for the NFL Parties agreed to revisit this amount after June 6, 2019, the date when eligibility for baseline assessment examinations expires for Retired NFL Football Players born on or before June 6, 1974. The Administrator is currently performing an analysis to support this effort, which will be outlined in the next quarterly status report to the Court.

23. Once a Retired NFL Football Player's diagnosis of Level 1 Neurocognitive Impairment is finalized, the Administrator contacts the Retired NFL Football Player (or, in the case of a represented Retired NFL Football Player, his attorney) to inform him of his eligibility and schedule an orientation. Given that Retired NFL Football Players eligible for the BAP Supplemental Benefits suffer from moderate cognitive impairment, the Administrator seeks to

include a family member or close friend of the Retired NFL Football Player during scheduling who can help the Retired NFL Football Player maximize program benefits. During this orientation, the Administrator outlines the benefits offered and solicits the Retired NFL Football Player's choice of a Qualified BAP Provider neurologist to perform an initial consultation. The purpose of the initial consultation is to review the results of the baseline assessment examination and determine a treatment and evaluation plan for the Retired NFL Football Player. Table 5 shows the status of Retired NFL Football Players who have been notified of their eligibility for participation in the BAP Supplemental Benefits, as of August 21, 2019.

Table 5. BAP Supplemental Benefits Participation Status

Status	Number
Retired Players/Attorneys notified of BAP Supplemental Benefits eligibility	103
Awaiting attorney response to schedule orientation	14
Retired Players in scheduling process for orientations	3
Retired Players with upcoming orientations scheduled	3
Retired Players with orientation complete	83
Awaiting provider selection by Retired Player	19
Contracting with selected provider	4
In process of scheduling initial consultation	2
Initial consultation upcoming	11
Initial consultation attended/receiving ongoing benefit	47

Note: Indented rows are subsets of rows above.

24. During the previous quarter, the Administrator received requests from Settlement Class Members and from Qualified BAP Providers to offer cognitive rehabilitation therapy as a covered service of the BAP Supplemental Benefits. After a thorough review of the literature on cognitive rehabilitation therapy, and in consultation with the Parties, the Administrator initiated a pilot program to evaluate the feasibility of offering such services. To that end, the Administrator has recruited Qualified BAP Providers to participate in the pilot program and is currently negotiating operational details with those providers.

Respectfully submitted,

BAP ADMINISTRATOR

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